

DEPOSITION OF JEFFREY IVAN WAY  
CONDUCTED ON WEDNESDAY, JUNE 25, 2003

1 (Pages 1 to 4)

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| <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF MARYLAND</p> <p>3 ----- X</p> <p>4 MICHAEL HACKLEY ARCHITECTS, :</p> <p>5 P.C. and MICHAEL HACKLEY :<br/>Plaintiffs :</p> <p>6 v. : Case No.:</p> <p>7 I.V.I.X. INC., JOHN LEE, : JFM 02 CV 3363</p> <p>8 COMMERCIAL FINISH GROUP, :<br/>INC., JEFFREY WAY, AND :<br/>JOHN TROUTON :<br/>Defendants :</p> <p>9 -----:</p> <p>10 Deposition of JEFFREY IVAN WAY</p> <p>11 Baltimore, Maryland</p> <p>12 Wednesday, June 25, 2003</p> <p>13 2:00 p.m.</p> <p>14 Job No.: 5-18615</p> <p>15 Pages 1 - 35</p> <p>16 Reported by: Beatriz D. Fefel, RPR</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> | <p>1 APPEARANCES</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFFS:</p> <p>4 DEBORAH WESTERVELT, ESQUIRE</p> <p>5 LAW OFFICES OF ROYAL W. CRAIG, P.C.</p> <p>6 10 North Calvert Street</p> <p>7 Suite 153</p> <p>8 Baltimore, Maryland 21202</p> <p>9 (410) 385-2383</p> <p>10</p> <p>11 ON BEHALF OF THE DEFENDANTS JOHN LEE AND</p> <p>12 JEFFREY WAY:</p> <p>13 CHRISTOPHER JOHNS, ESQUIRE</p> <p>14 ATTORNEY AT LAW</p> <p>15 18961 Highstream Drive</p> <p>16 Germantown, Maryland 20874</p> <p>17 (410) 984-3000</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> |
| <p>1 Deposition of JEFFREY IVAN WAY held at the</p> <p>2 offices of:</p> <p>3</p> <p>4 L.A.D. REPORTING</p> <p>5 10 North Calvert Street</p> <p>6 The Equitable Building, Suite 141</p> <p>7 Baltimore, Maryland 21202</p> <p>8 (410) 539-3664</p> <p>9</p> <p>10</p> <p>11</p> <p>12 Pursuant to agreement, before Beatriz D.</p> <p>13 Fefel, Registered Professional Reporter and Notary</p> <p>14 Public of the State of Maryland.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>   | <p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 ON BEHALF OF THE DEPONENT:</p> <p>4 JAMES E. McCOLLUM, JR., ESQUIRE</p> <p>5 JAMES E. McCOLLUM, JR. &amp; ASSOCIATES, P.C.</p> <p>6 7309 Baltimore Avenue</p> <p>7 Suite 117</p> <p>8 College Park, Maryland 20741-1717</p> <p>9 (301) 864-6070</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>   |

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| <p style="text-align: right;">9</p> <p>1 Q And are you licensed in the State of</p> <p>2 Maryland?</p> <p>3 A Yes, I am.</p> <p>4 Q Are you licensed in any other states?</p> <p>5 A In the District of Columbia.</p> <p>6 Q Do you know Mr. John Lee?</p> <p>7 A I know him as the, I guess, owner/operator</p> <p>8 of Level X stores.</p> <p>9 Q Have you ever had any conversations with</p> <p>10 Mr. Lee?</p> <p>11 A As relates to?</p> <p>12 Q As relates to the Prince George's Plaza</p> <p>13 plans for the retail store for Level X.</p> <p>14 A Yes, I've probably had a couple, a couple or</p> <p>15 three conversations with him which date back to the</p> <p>16 time of my involvement, which I guess was during the</p> <p>17 Summer of 2002.</p> <p>18 Q Do you recall the first time you had any</p> <p>19 communication with Mr. Lee?</p> <p>20 A Yes. I received a call from him.</p> <p>21 Q And do you have an idea of what time frame</p> <p>22 that might have been?</p>   | <p style="text-align: right;">11</p> <p>1 that first contact?</p> <p>2 A Mr. Lee informed me, as best as I can</p> <p>3 recall --</p> <p>4 Q Sure.</p> <p>5 A -- that he had some plans, that he was</p> <p>6 endeavoring to get a building permit from Prince</p> <p>7 George's County, DER, I guess, which stands for</p> <p>8 Department of Environment or Resources, or something</p> <p>9 like that. They informed him that he needed to have</p> <p>10 his plans reviewed and sealed by an architect, and</p> <p>11 that's what he informed me of, that's what he</p> <p>12 requested of me, and that's what he asked if I had the</p> <p>13 capability of doing. I said possibly, I guess we can</p> <p>14 see what you have. And that was the nature of our</p> <p>15 first conversation.</p> <p>16 Q And then did you have another conversation</p> <p>17 with Mr. Lee after that first conversation?</p> <p>18 A The only other conversation that I recall --</p> <p>19 and, again, it was probably just a couple of</p> <p>20 conversations, and for semantics purposes, a couple</p> <p>21 means a couple or three.</p> <p>22 Q Umh-humh.</p>   |
| <p style="text-align: right;">10</p> <p>1 A Only to say during the Summer of 2002,</p> <p>2 possibly July, somewhere in there.</p> <p>3 Q Okay. That's fine.</p> <p>4 And what was the, can you -- what was</p> <p>5 discussed in that first phone call?</p> <p>6 A He informed me that -- actually, I'd like to</p> <p>7 mention that his call was a follow-up call to a prior</p> <p>8 call. I was contacted by the mall management at</p> <p>9 Prince George's Plaza, and the mall management</p> <p>10 informed me that they had a tenant who was a current</p> <p>11 tenant who was going to be relocating to another space</p> <p>12 in that mall, and that this tenant, whom I later found</p> <p>13 out to be John Lee, needed some assistance in permit</p> <p>14 services, and then he said, Mr. Lee, the mall</p> <p>15 management said Mr. Lee will be contacting you. And</p> <p>16 then I got a call from Mr. Lee.</p> <p>17 Q Do you recall the name of the person from</p> <p>18 mall management?</p> <p>19 A It might have been Mr. Anthony Yancy.</p> <p>20 Q So the mall management person told you that</p> <p>21 John Lee would be calling you, and then John Lee</p> <p>22 called you. And could you explain what occurred in</p> | <p style="text-align: right;">12</p> <p>1 A I remember that we scheduled to meet so that</p> <p>2 he could show me, you know, the space in the</p> <p>3 particular mall. And that would probably have been</p> <p>4 our second conversation at the space, at the tenant</p> <p>5 space.</p> <p>6 Q And so you met Mr. Lee at the tenant space?</p> <p>7 A Right. A day or two later, correct.</p> <p>8 Q Okay. And what occurred at that meeting?</p> <p>9 A The meeting was attended by, I forget his</p> <p>10 name, but someone, a general contractor, it was</p> <p>11 attended by John Lee, and I was there. And I recall</p> <p>12 that they showed me, you know, what their goal was,</p> <p>13 which is to build out the space. At that point the</p> <p>14 space had been, I guess you would call it, selectively</p> <p>15 demolished or demolished, or whatever; it's</p> <p>16 basically when it's taken down to a raw shell</p> <p>17 condition. So that's what I saw, and that's pretty</p> <p>18 much the nature of our second conversation.</p> <p>19 Q Did Mr. Lee or anyone on behalf of Level X</p> <p>20 at that meeting ask you to provide a specific service</p> <p>21 for Level X with regard to that store?</p> <p>22 A Well, it was just a continuation of the</p> |

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| <p>17</p> <p>1 pursuant to satisfying your PG/DER permit application/<br/>2 revalidation only for the Level X space in PG Plaza."<br/>3 Then back to the text, the actual typed<br/>4 text, quote: "Level X" - again in Mr. Johns' voice on<br/>5 behalf of Level X - "Level X, Incorporated agrees to<br/>6 indemnify you and your consulting engineer, G.I.<br/>7 Worsley and to provide you with legal representation<br/>8 and support, at no cost to you, relative to any claim<br/>9 made against you and/or your consulting engineer by<br/>10 the previous architect. Thank you for your<br/>11 assistance. Sincerely, Christopher M. Johns." That's<br/>12 the content of the letter<br/>13 MS. WESTERVELT: Okay. Could we get this<br/>14 labeled Exhibit 1 please?<br/>15 (Deposition Exhibit No. 1 was marked for<br/>16 identification and was attached to the transcript.)<br/>17 BY MS. WESTERVELT:<br/>18 Q The typed date on here is July 23rd, and<br/>19 then it looks like your handwritten changes are July<br/>20 25th; is that correct?<br/>21 A According to this, yes, it does look like<br/>22 It's handwritten in there, 7/25/02.</p> | <p>19</p> <p>1 the place, you have to have exit signs there or<br/>2 emergency battery pack lights, just enough to make<br/>3 sure that if there's a power failure the patrons or<br/>4 employees can see their way to the exit, and there's<br/>5 usually a bathroom or something. That was typical for<br/>6 this store. It was a very straightforward, just a big<br/>7 box store, as many retail stores are now, and they're<br/>8 just basically pretty much dressed out with racks of<br/>9 merchandise, and that's the case with this store, it<br/>10 was pretty much a box. So I was able to determine in<br/>11 my opinion that the plans seemed to be in conformity<br/>12 with what I, you know, know code requirements to be.<br/>13 At that point I signed and sealed the plans,<br/>14 but I put a superscription or subscription, I either<br/>15 wrote it above or beneath my seal on the plan, it said<br/>16 for permit review only or for permit purposes only,<br/>17 something like that, and I affixed my signature, my<br/>18 initial signature thereto.<br/>19 Q How long did that review take, roughly?<br/>20 A I probably was able to turn it around in a<br/>21 day or two.<br/>22 Q And then who did you return the drawings to?</p> |
| <p>18</p> <p>1 Q Okay. At the meeting that you had at Prince<br/>2 George -- at the store space, did you receive the<br/>3 plans at that time to review?<br/>4 A I don't recall that I received the plans at<br/>5 that time.<br/>6 Q Do you recall when you received them?<br/>7 A It possibly was a day or two later.<br/>8 Q And who gave them to you?<br/>9 A It possibly was the guy from -- the general<br/>10 contractor, again, whose name I don't remember. It<br/>11 may have been Mr. Lee, although I'm kind of fuzzy in<br/>12 that area.<br/>13 Q And what did you do after you were given the<br/>14 plans?<br/>15 A I took the plans, I reviewed them, and after<br/>16 I was completed with the review, after I determined in<br/>17 my opinion that the plans, you know, conformed to the<br/>18 building codes and there were adequate means of<br/>19 egress -- I mean, in a retail space it's very, it's<br/>20 very straightforward, basically you have a box, you<br/>21 have an entrance doorway, and you have a couple of<br/>22 emergency egress or secondary doorways to get out of</p>  | <p>20</p> <p>1 A I do recall meeting with -- I'm sorry. The<br/>2 record, I'm sure, will reflect whatever his name was,<br/>3 but the general contractor.<br/>4 Q Could it have been Ron Rees?<br/>5 A That sounds familiar, and I gave the plans<br/>6 back to him.<br/>7 Q Okay. Time frame-wise, based on the dates<br/>8 that we have in front of us on this letter, would that<br/>9 review of the plans have preceded this letter, or<br/>10 would that review have come after this letter?<br/>11 A That's -- in my, in my recollection, it may<br/>12 have been somewhat overlapping and concurrent.<br/>13 Because this letter, as you see, represents my edits,<br/>14 or my comment on a draft by Level X's representative<br/>15 or attorney. I don't have a recollection as to<br/>16 whether or not I received this in its final form. I<br/>17 can't recall.<br/>18 Q Do you recall if you ever received this in<br/>19 its final form?<br/>20 MR. JOHNS: Asked -- already answered.<br/>21 MS. WESTERVELT: No.<br/>22 Q Is this the final form, is this exhibit the</p>  |

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| <p style="text-align: right;">21</p> <p>1 final form of this letter?</p> <p>2 A I have -- I do not recall seeing it in its</p> <p>3 final form where my language was added into the typed.</p> <p>4 Q That's my question.</p> <p>5 A Right.</p> <p>6 Q Okay. When John Lee asked you to provide</p> <p>7 this service, did he tell you that Level X owned the</p> <p>8 drawings?</p> <p>9 A That was my understanding, yes.</p> <p>10 Q And was it your understanding because of</p> <p>11 something that Mr. Lee said or someone else from Level</p> <p>12 X said?</p> <p>13 A Well, when I looked at the drawings they</p> <p>14 seemed to exhibit, in my opinion, you know, ownership.</p> <p>15 I did not see anywhere in the plans when I was</p> <p>16 reviewing them, I didn't see anything that expressed</p> <p>17 that the plans were not owned by the national brand.</p> <p>18 You see, the premise under which I understood this</p> <p>19 product was at -- Level X is a national brand</p> <p>20 retailer, like, quote/unquote, old Navy or The Gap or</p> <p>21 The Limited or something, or McDonald's.</p> <p>22 Q Umh-humh.</p>   | <p style="text-align: right;">23</p> <p>1 accepted their representation that the plans were</p> <p>2 theirs. I -- my impression was that he was a plan</p> <p>3 preparer, but . . .</p> <p>4 Q Did you question Level X regarding Michael</p> <p>5 Hackley and why they needed you to sign and stamp the</p> <p>6 drawings and not Michael Hackley?</p> <p>7 A No, not really. Because the premise under</p> <p>8 which it came to me, I think I may have made an</p> <p>9 assumption that since Prince George's County had asked</p> <p>10 them to have these plans prepared, I presume that they</p> <p>11 had presented the plans, whatever, without a sealed</p> <p>12 signature, I guess I presumed that they reviewed the</p> <p>13 plans, looked at them or whatever, and said, listen,</p> <p>14 we need to get an architect to sign and seal these. I</p> <p>15 just presumed that that was, you know, the quote/</p> <p>16 unquote, order of the day, to get that accomplished.</p> <p>17 Q The statement in here that was typed, and</p> <p>18 you added a couple words to the sentence that says:</p> <p>19 "Level X, Inc., agrees to indemnify you and your</p> <p>20 consulting engineer and to provide you with legal</p> <p>21 representation and support, at no cost to you,</p> <p>22 relative to any claim made against you by the previous</p> |
| <p style="text-align: right;">22</p> <p>1 A And through my own knowledge of working with</p> <p>2 or knowing about the workings of those national brands</p> <p>3 is that they have a variety of plan preparers;</p> <p>4 sometimes they have plan preparers that are in-house,</p> <p>5 like their own in-house CADD draftsman or architects</p> <p>6 or engineers and staff; sometimes they do what we say,</p> <p>7 quote/unquote, farm the drawings out to a variety of</p> <p>8 plan preparers. And I presumed, based on, you know,</p> <p>9 their bringing the plans to me and that Level X was</p> <p>10 very large in terms of, you know, its typeface or the</p> <p>11 lettering on the cover page, and it seemed to me that</p> <p>12 they were their plans. I mean, I didn't question that</p> <p>13 they were not their plans.</p> <p>14 Q Did you have -- did you ever have any</p> <p>15 conversations with John Lee or anyone else, any other</p> <p>16 representative of Level X about Michael Hackley, the</p> <p>17 architect, the original architect on those plans?</p> <p>18 A The only thing I recall about Michael</p> <p>19 Hackley, to the best of my recollection, is that he</p> <p>20 was not able to provide the signature and seal or</p> <p>21 whatever. I, I didn't have very, very much</p> <p>22 information on that at all. I just -- you know, I</p> | <p style="text-align: right;">24</p> <p>1 architect," and you inserted "and/or your consulting</p> <p>2 engineer."</p> <p>3 A Okay.</p> <p>4 Q What does that sentence mean to you? Did</p> <p>5 you -- well, let me ask you that. What did that</p> <p>6 sentence mean to you?</p> <p>7 A Well, again --</p> <p>8 Q That specific sentence.</p> <p>9 A Right. Again, under a scenario where I'm</p> <p>10 reviewing plans that are prepared by somebody else, or</p> <p>11 drafted, whatever the case, you know, if there is a</p> <p>12 problem with the plans, with the technical content of</p> <p>13 the plans, you know, I wanted it very clear that I'm</p> <p>14 reviewing these in response to Prince George's</p> <p>15 County's direction and request for code conformity</p> <p>16 only. If there -- my purpose was that if there was</p> <p>17 any problems with technical content, that I'm not</p> <p>18 responsible for technical content. If something goes</p> <p>19 wrong in the construction process, if something gets</p> <p>20 built wrong, wires get cut, or if in the course of</p> <p>21 cutting through the slab a reinforcing rod, I just</p> <p>22 wanted it as clear as possible that my role is to sign</p>   |



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| 25 | <p>1 and seal the plans pursuant to satisfying PG/DER's</p> <p>2 permit process.</p> <p>3 Q And with regard to pursuant to satisfying</p> <p>4 the PG/DER permit application, where did you obtain</p> <p>5 your knowledge that PG/DER was requiring these plans</p> <p>6 to be signed and sealed for permit purposes?</p> <p>7 MR. JOHNS: Objection as to the</p> <p>8 characterization "required." Go ahead, you can</p> <p>9 answer.</p> <p>10 A The plans were -- the project was presented</p> <p>11 to me. The question was presented to me by Level X.</p> <p>12 I accepted their representation that the plans were</p> <p>13 theirs, Prince George's County has asked for this, and</p> <p>14 that's why I did it.</p> <p>15 Q Okay. This letter says for the flat fee of</p> <p>16 twelve hundred dollars. Were you paid twelve hundred</p> <p>17 dollars for this service?</p> <p>18 A Yes, I was.</p> <p>19 Q And after, after you signed and sealed the</p> <p>20 drawings and handed them back to Mr. Rees, you think,</p> <p>21 someone from Commercial Finish Group, and you were</p> <p>22 paid, did you ever provide any more services for Level</p> | 27 | <p>1 A It's cost me more than that.</p> <p>2 Q More than that?</p> <p>3 A Yes, sir.</p> <p>4 Q All right. So you haven't profited from any</p> <p>5 of this, have you?</p> <p>6 A No, I have not profited from this, by no</p> <p>7 stretch of the imagination.</p> <p>8 MR. JOHNS: Thank you.</p> <p>9 MS. WESTERVELT: One more question, then.</p> <p>10 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS</p> <p>11 BY MS. WESTERVELT:</p> <p>12 Q Mr. Johns asked you didn't it cost you</p> <p>13 twenty-five hundred dollars, and you said yes, it cost</p> <p>14 you more than that. Could you explain that response?</p> <p>15 A Yes. The -- Mr. Hackley filed a complaint</p> <p>16 with the State of Maryland Board of Registrars or</p> <p>17 Architects, and he brought a complaint against me for</p> <p>18 reviewing and sealing plans that I did not prepare.</p> <p>19 And the Board of Architects queried me, they</p> <p>20 interviewed me through their process. I informed them</p> <p>21 of what I've informed you of today, and I was</p> <p>22 interested in getting this matter resolved quickly.</p> |
| 26 | <p>1 X?</p> <p>2 A No.</p> <p>3 MS. WESTERVELT: I think that's all the</p> <p>4 questions I have.</p> <p>5 MR. JOHNS: Just --</p> <p>6 MS. WESTERVELT: Thank you very much.</p> <p>7 MR. JOHNS: -- two questions.</p> <p>8 EXAMINATION BY COUNSEL FOR THE DEFENDANTS LEE AND WAY</p> <p>9 BY MR. JOHNS:</p> <p>10 Q Mr. Way, what, if any, copyright markings</p> <p>11 that one would typically see did you see on the plans,</p> <p>12 do you recall?</p> <p>13 A I don't recall seeing any particular or</p> <p>14 explicit, you know, references of copyright. You mean</p> <p>15 the tie-back to the previous plan preparer?</p> <p>16 Q Well, like a "C" or anything like that. Do</p> <p>17 you recall? You don't seeing that, do you?</p> <p>18 A No, I do not.</p> <p>19 Q Okay. You testified you received twelve</p> <p>20 hundred dollars, but out of this whole occurrence</p> <p>21 isn't it true that it actually cost you twenty-five</p> <p>22 hundred dollars?</p>   | 28 | <p>1 It's stressful. And they generated a, what is called</p> <p>2 a Consent Order and they fined me, and I paid the</p> <p>3 fine. Because I had no intention of doing anything</p> <p>4 wrong.</p> <p>5 MS. WESTERVELT: Excuse me. Mr. Johns,</p> <p>6 that's very disturbing to whisper while your client is</p> <p>7 speaking.</p> <p>8 MR. JOHNS: Excuse me.</p> <p>9 MS. WESTERVELT: I'm sorry. Could you read</p> <p>10 back his last two sentences?</p> <p>11 (Answer was read by the Reporter.)</p> <p>12 MR. JOHNS: Just let the record reflect that</p> <p>13 I was not whispering to the witness. I was talking to</p> <p>14 his counsel -- another attorney in the room.</p> <p>15 A And I wanted to get the matter settled as</p> <p>16 quickly as possible.</p> <p>17 Q Sure. Then one other question as a</p> <p>18 follow-up to Mr. John's question about the copyright</p> <p>19 notice. Do you put the copyright notice on the plans</p> <p>20 that you create yourself?</p> <p>21 A Yes, I do. It depends on the nature of it.</p> <p>22 For example, if I'm doing it -- if someone has hired</p> |